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Kirkpatrick
PLM-17

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216652

DATE: May 6, 1985

MATTER OF: Samuel Evans

DIGEST:

An employee is not entitled to relocation expenses when his transfer is not in the interest of the Government. The rule that when an employee is transferred under a merit promotion plan he should normally be allowed relocation expenses is not applicable when the transfer is to a position at the same grade level without known promotion potential, if the employee is not otherwise recruited for the position at the new duty station even though selection may have been on a competitive basis. In this case the agency decided that the transfer was not in the interest of the Government, even though the employee was competitively selected from a list of qualified eligibles furnished by the Office of Personnel Management. In the circumstance the determination of the agency is not overruled.

Mr. Samuel Evans, an employee of the Veterans Administration, is not entitled to relocation expenses incident to his transfer from Fort Riley, Kansas, to Dallas, Texas, in August 1984.^{1/} The transfer was primarily for his own convenience or benefit rather than primarily in the Government's interest, since he transferred laterally to a position in the same grade with no greater promotion potential and he was not recruited under a merit promotion plan.

An employee is entitled to relocation expenses only if the agency determines that the transfer is in the interest of the Government and not primarily for the convenience or benefit of the employee. 5 U.S.C. §§ 5724(a) and (h). Federal Travel Regulations, para. 2-1.3 (Supp. 1, September 28, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1984).

^{1/} Mr. C. Wayne Hawkins, Medical Center Director, Veterans Administration, Dallas, Texas, requested this advance decision.

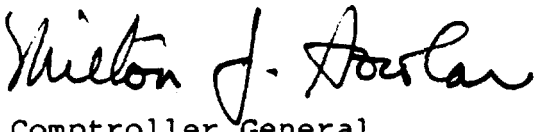
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Unless agency regulations otherwise limit relocation expenses, an employee who transfers upon his selection under a merit promotion plan is considered to have been recruited for the position so that his transfer is in the interest of the Government. Eugene R. Platt, 59 Comp. Gen. 699 (1980), reconsidered 61 Comp. Gen. 156 (1981). On the other hand, employees often transfer to a position at the same grade as their previous position without greater promotion potential (lateral transfer). In such cases the agency must determine, based on the facts involved, whether the transfer is primarily in the interest of the Government or is primarily for the employee's benefit or at his request. We will not substitute our judgment for that of the agency except in cases where the agency action is clearly erroneous, arbitrary, or capricious. Julie-Anna T. Tom, B-206011, May 3, 1982. When a lateral transfer or demotion is involved and the employee is not selected under a merit promotion plan, if there is no recruitment action resulting in a transfer for the Government's interest, the transfer may be considered primarily in the interest of the employee even though the employee responds to a job vacancy announcement and is competitively selected. Norman C. Girard, B-199943, August 4, 1981; also, Julie-Anna T. Tom, B-206011, supra, Curtis E. Jackson, B-210192, May 31, 1983.

It appears that Mr. Evans was competitively selected from a list of qualified eligibles provided by the Office of Personnel Management. This selection did not necessarily result in a transfer primarily for the benefit of the Government. When the individual has applied for a transfer for personal reasons this may be considered to control the outcome rather than the Government's need to fill a position. In this case Mr. Evans responded to an offer of a position at the same grade he held without the new position having a known promotion potential. The agency made it clear from the beginning that the offer of the position was on the condition that no transfer expenses would be paid. In other words they had determined that the transfer was primarily for the employee's benefit. Mr. Evans accepted the position knowing that this determination had been made.

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In the circumstances we will not substitute our judgment for that of the agency. Accordingly, Mr. Evans may not be reimbursed relocation expenses.

for 
Comptroller General
of the United States